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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

(Continued on inside front cover)

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE

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INTEREST OF THE AMICUS CURIAE*

1. The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and trade and professional associations, a direct business membership in excess of 52,000 and an underlying membership of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

2. The Chamber regularly represents the interests of its member-employers in important labor relations matters vitally affecting those interests. Such representation constitutes a significant aspect of the Chamber's functions. Accordingly, the Chamber has sought to advance those interests in a wide spectrum of labor relations litigation.**

*Consents of all parties to the Chamber's participation have been filed with this Court pursuant to Rule 42 of the Supreme Court Rules.

**E.g., *Connell Construction Co., Inc. v. Plumbers and Steamfitters Local Union 100*, (Supreme Court), No. 73-1256; *Gateway Coal Company v. United Mine Workers of America, et al.*, 414 U.S. 368 (1974); *William E. Arnold Co. v. Carpenters District Council of Jacksonville, etc., et al.*, 417 U.S. 12 (1974); *Alexander v. Gardner-Denver Co.*, (Supreme Court) No. 72-5847; *Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz v. Lloyd W. McCorkle, et al.*, (Supreme Court), No. 72-1554; *Marco DeFunis and Betty DeFunis, his wife v. Charles Odegaard, President of the University of Washington, et al.*, (Supreme Court), No. 73-235; *N.L.R.B. v. Bell Aerospace Company Division of Textron, Inc.*, (Supreme Court), No. 72-1598, *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970); *N.L.R.B. v. The Boeing Company, et al.*, 93 S. Ct. 1952 (1973); *N.L.R.B. v. Granite State Joint Board*, 409 U.S. 213 (1972); *N.L.R.B. v. Pittsburgh Plate Glass Co.*, 404 U.S. 517 (1971).

3. The question presented in the instant case is a matter of continuing importance to the Chamber. Specifically, the parties ask this Court whether a no-strike clause in a collective bargaining agreement is breached and can be enforced by a Federal District Court issuing an injunction pursuant to §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), when a union orders employees in the bargaining unit to honor a picket line established by a different local of the same union on behalf of employees in another bargaining unit at the employer's same facility. This question is of particular concern to the Chamber and its members because any rule which may emerge will necessarily exert a substantial impact on the ability of the Chamber's members to enforce a no-strike pledge contained in a collective bargaining agreement and to obtain prompt injunctive relief to curtail work stoppages which violate this pledge. The rationale of the Court below, if adopted, will not only interfere with an employer's right to enforce its contractual settlement with the union, but also will defeat the national objective of industrial peace through contractual agreement.

ARGUMENT

THE NORRIS-LAGUARDIA ACT DOES NOT PRECLUDE THE SPECIFIC ENFORCEMENT OF A NO-STRIKE CLAUSE BY A COURT PURSUANT TO SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

In the context of broad arbitration and no-strike clauses, this Court implicitly recognized in *Gateway*

Coal Co. v. United Mine Workers, 414 U.S. 368 (1974), that all coercive economic action during the term of the Agreement is presumptively enjoinable unless an express and clear exception permitting such activity is explicitly included in the collective bargaining agreement. *Id.* at 379-380. *See also* Recent Development, *Injunction May Issue Against Labor Unions To End Strike Over Safety Disputes Despite Absence Of A No-Strike Clause In Collective Bargaining Agreement*, 63 Geo. L.J. 275, 277 (1974). This conceptual framework favoring peaceful resolution of disputes, founded upon the *Steelworkers* trilogy,[1] has developed to such an extent that even the no-strike clause itself may be implied where the contract specifically mandates arbitration of the grievance involved. *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962). The approach foreshadowed by the Court in *Gateway Coal* is a useful and a pragmatic one because it both affirms the obligations the parties freely entered into in the collective bargaining agreement[2] and gives enforceability to the parties' commitment.[3] *See*

[1]*United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Corp.*, 363 U.S. 593 (1960).

[2]In *Gateway Coal*, this Court said that the scope of both clauses "depends on the intent of the contracting parties." *Id.* at 382.

[3]This Court, quoting from *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), stated in *Gateway Coal* as follows:

> Denial of all equitable relief from breaches of no-strike obligations would have caused "devastating implications for the enforceability of arbitration agreements." 398 U.S. at 247.

Id. at 382.

Gateway Coal Co. v. United Mine Workers, supra at 382.

Furthermore, this judicial responsiveness to the parties' contractual bargain is in harmony with Section 203(d) of the Labor Management Relations Act, 29 U.S.C. §173(d), which states as follows:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

In this particular litigation now before the Court, the terms of the no-strike clause[4] and the grievance arbitration clause[5] when read together[6] unequivocally

[4]The no-strike clause states in part as follows:

> There shall be no strikes, work stoppages, or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented.

[5]The grievance arbitration clause states as follows:

> Should differences arise between the Company and any employee covered by this agreement as to the meaning and application of the provisions of this Agreement or should *any trouble of any kind arise in the plant*, there shall be no suspension of work on account of such differences.... [emphasis added]
>
> . . .
>
> In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company.

[6]In *Gateway Coal*, this Court stated that "the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." *Id.* at 382.

manifest the intent of the parties that there shall be no work disruption "should *any trouble of any kind arise* in the plant." [emphasis added]. In fact, this language is broader than language in a United Mine Workers arbitration clause considered in *Gateway Coal* and which was called "exceptionally broad" in a Seventh Circuit decision.[7] But the Second Circuit below felt restricted by what it perceived to be the "narrowness . . . of injunctive relief" permitted under §301(a), and therefore refused to issue an injunction.[8]

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[7] In *Gateway Coal*, this Court described the arbitration clause between the parties as follows:

> This arbitration clause governs disputes "as to the meaning and application of the provisions of this agreement," disputes "about matters not specifically mentioned in this agreement," and "any local trouble of any kind aris[ing] at the mine."

Id. at 375. In *Inland Steel Co. v. Local Union No. 1545, United Mine Workers*, 505 F.2d 293 (7 Cir. 1974), the Court commented on the United Mine Workers arbitration clause as follows:

> It is our conclusion that the "any local trouble of any kind aris[ing] at the mine" language contained in this exceptionally broad arbitration clause is itself expansive enough to encompass the present disputes. A work stoppage which results from the honoring of stranger picket lines by company employees is certainly local trouble at the mine. Any other construction of this language would simply be ignoring the realities of the situation.

Id. at 298. This same conclusion should apply to the grievance clause language in this case "should any trouble of any kind arise in the plant."

[8] The Second Circuit stated as follows:

> In assessing the extent to which §301(a) modified the anti-injunction policy of Norris-LaGuardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Market* on the narrowness of its holding in favor of injunctive relief. *Id.* at 253. *Compare Emery Air Freight Corp. v. Local Union 295*, 449 F.2d 586, 588 (2 Cir. 1971). In narrowly construing the exception to §4 of the Norris-LaGuardia Act carved out by §301(a) in the view of the *Boys Market* Court, then, we take particular note of the various indications in *Boys Market* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes over a grievance which the union has agreed to arbitrate are within the scope of the exception. *See e.g., Boys Market, supra*, 398 U.S. at 248, 254; *Sinclair Refining, supra*, 370 U.S. 195 at 217-18, 224-25, 228. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

Id. at 89 LRRM 2303, 2305.

Such a constrained reading of the accommodation required to be made between Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), is a short-sighted and distorted one which exaggerates the "surface conflict"[9] between the two statutes while disregarding their intended statutory purposes. Fifteen years have passed since the *Steelworkers* trilogy cast the hope of industrial peace towards contractually agreed upon methods for the resolution of disputes. Five years ago in *Boys Markets*, this Court found in a further refinement of a developing labor law no conflict between a Norris-LaGuardia Act designed to assist emerging labor

[9] In *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 217 (1962), Justice Brennan, in his dissent, emphasized the "surface conflict" between the two statutory commands.

organizations[10] and enjoining a modern union's violation of a no-strike clause it had agreed to honor. While it is true that collective bargaining agreements-unlike most contracts–are living documents that regulate ongoing relationships, it is also true that they are, and should be in all respects, binding fully on both parties as are other contractual commitments.

In recognizing the need for "an efficacious remedy" to uphold the union's commitment to refrain from striking, this Court in *Boys Markets* stated that issuing an injunction to enforce the contract did not violate "the central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations" because an injunction "merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration." *Id.* at 252-53. The *Boys Markets* Court emphasized the sharp distinction between (1) the enjoining of a union's efforts to organize employees for representational purposes and (2) the specific enforcement of agreements contained in labor contracts.[11] This difference can be highlighted by a brief examina-

[10]*See* Section 2 of the Norris-LaGuardia Act which expressly states the public policy directed at protecting organizing campaigns of the nascent labor movement.

[11]Justice Brennan, dissenting in *Sinclair*, recognized this difference when he said:

> I emphasize that the question in this case is not whether the basic policy embodied in Norris-LaGuardia against the injunction of activities of labor unions has been abandoned in actions under §301; the question is simply whether injunctions are barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer.

Id. at 224.

tion of the context in which the Norris-LaGuardia Act was created.

In *Boys Markets*, this Court acknowledged the historical setting leading to the passage of the Norris-LaGuardia Act as follows:

> The Norris-LaGuardia Act was responsive to a situation totally different from that which exists today. In the early part of this century, the federal courts generally were regarded as allies of management in its attempt to prevent the organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. The result was a large number of sweeping decrees, often issued *ex parte*, drawn on an *ad hoc* basis without regard to any systematic elaboration of national labor policy. *See Drivers' Union v. Lake Valley Co.*, 311 U.S. 91, 102 (1940).

Id. at 250.[12] This use of the injunction received much criticism from legislators and scholars before the passage of the Norris-LaGuardia Act.[13] The legislative

[12]That management utilized the labor injunction to prevent union organizational drives is demonstrated by the case law prior to the enactment of the Norris-LaGuardia Act. *E.g., Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association of North America*, 274 U.S. 37 (1927); *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921); *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917); *International Organization of United Mine Workers of America v. Red Jacket Consolidated Coal & Coke*, 18 F.2d 839 (4 Cir. 1927); and *ALCO Zander v. Amalgamated Clothing Workers of America*, 35 F.2d 203 (E. D. Pa. 1929).

[13]*See* 75 Cong. Rec. 5462, 72d Cong. 1st Sess. (1932); S. Rep. No. 163, 72d Cong., 1st Sess. at 8 (1932); Frankfurter & Greene, *The Labor Injunction* (1930); Witte, *The Government and Labor Disputes* (1932); and Witte, *The Federal Anti-Injunction Act*, 16 Minn. L. Rev. 638 (1932).

history of the Norris-LaGuardia Act indicates that the proscriptions of the Act were directed primarily towards using injunctions to disrupt union organizational campaigns.[14] These concerns leading to the passage of the Norris-LaGuardia Act demonstrate that the prohibition of the enforcement of contractual commitments contained in a collective bargaining agreement was not the motivation for its passage. *See* Mendelsohn, *Enforceability of Arbitration Agreements Under Taft-Hartley Section 301,* 66 Yale L. J. 167,182 (1956); Stewart, *No-Strike Clauses in the Federal Court,* 59 Mich. L. Rev. 673, 678 (1961); and Note, *Accommodation of the Norris-LaGuardia Act To Other Federal Statutes,* 72 Harv. L. Rev. 354, 356 and 365 (1958).

Mr. Justice Brennan dissenting in *Sinclair* said that the "overriding purpose of §301 [is to] assist [in] the enforcement of collective agreements." *Id.* at 219. This purpose behind §301 must be superimposed over both the impetus for the enactment of the Norris-LaGuardia Act and the evolution of the labor movement in this country.[15] When this perspectice is utilized the

[14]*See* 75 Cong. Rec. 5463, 72d Cong. 1st Sess. (1932) (Remarks of Mr. O'Connor); *See* H.R. Rep. No. 669, 72d Cong. , 1st Sess. (1932); S. Rep. No. 153, 72d Cong., 1st Sess. at 16 (1932).

[15]This Court recognized that this contractual approach must be taken in *Boys Markets, supra,* when it observed that:

> Statutory interpretation requires more than concentration upon isolated words; rather, consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions.

Id. at 250. Also, this Court in *Boys Markets* characterized the historical dynamics of the growth of labor organizations as follows:

> As labor organization grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes.

Id. at 251.

rationale for specifically enforcing a no-strike clause without regard to the characterization of the grievance becomes evident. Obviously, this Court recognized in *Boys Markets* employers will not assume obligations to arbitrate disputes unless a remedy is available to enforce "the concomitant undertaking of the union to refrain from striking." *Id.* at 252.[16] This *quid pro quo* relationship fosters the congressional policy favoring the voluntary establishment of a mechanism for the peaceful resolution of labor disputes while at the same time not interfering with the "core purpose" of the Norris-LaGuardia Act. *Id.* at 253.[17] Concern over the nature of the grievance must necessarily result in a district court functioning as an arbitrator, a role which this Court has consistently stated results in undue interference with the proper development of private sector labor relations. *See United Steelworkers of*

[16]*See also William E. Arnold Co. v. Carpenters District Council of Jacksonville and Vicinity et al.,* 417 U.S. 12 (1974), where the Court said as follows:

> The assurance of swift and effective judicial relief provides incentive to eschew economic weapons in favor of binding grievance procedures and no-strike clauses.

Id. at 18.

[17]Perhaps, the best evidence of this lack of interference is the fact that Section 8 of the Norris-LaGuardia Act denies injunctive relief to any person who has failed to make every reasonable effort to settle the dispute by negotiation, mediation or voluntary arbitration. *See Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448, 458 (1957).

America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), where the Court said as follows:

> The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts.

Id. at 581. *See also Inland Steel Co. v. Local Union No. 1545, United Mine Workers,* 505 F.2d 293, 299 (7 Cir. 1974). If the parties wish to exclude a matter from arbitration, then the parties should be required to state so specifically.[18] The judicial precedent since the *Boys Markets* decision has vividly pointed up the shortcomings of requiring the federal judiciary to look behind the breach of the no-strike clause in an effort to identify and evaluate the dispute that resulted in unlawful economic action and its relationship to other provisions in the collective bargaining agreement. *See*

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[18]In *National Labor Relations Board v. Rockaway News Supply Co., Inc.*, 344 U.S. 71 (1953), this Court said as follows:

> In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein "shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act...." This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary provisions if they consider them appropriate to the particular kind of business involved. [footnote omitted].

Id. at 80.

Anheuser-Busch, Inc. v. Teamsters Local No. 633, National Conference Of Brewery and Soft Drink Workers, etc., 511 F.2d 1097 (1 Cir. 1975), *cert. den.*, ___U.S.___, 44 L. W. 3226 (1975); *Monongahela Power Company v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO, et al.*, 484 F.2d 1209 (4 Cir. 1973); and *Valmac Industries, Inc. v. Local 425,* __F.2d__, 89 LRRM 3073 (8 Cir. 1975). The performance of this task involves the federal judiciary unnecessarily in the substantive administration of the collective bargining agreement and serves to disrupt and often frustrate the interests underlying Section 301 without furthering the legislative purposes underlying the Norris-LaGuardia Act. The experience of the federal judiciary in administering the *Boys Markets* decision supports the application of its legal theory to breaches of contractual no-strike clauses without preconditioning injunctive relief on a difficult factual and legal analysis of the nature of the underlying dispute. *See Monogahela Power Company v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO, et al., supra; Valmac Industries, Inc. v. Local 425, supra;* and *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, et al.*, 502 F.2d 321 (3 Cir. 1974), *cert. den.* 419 U.S. 1049 (1974). The function of the Court should be no more[19] than to enforce the contractual obligations

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[19]A court's role when asked to make such a determination is somewhat analogous to a court's inquiry pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure as to whether a class action has been established. *See Eisen v. Carlisle & Jacquelin,* 417 U.S. 156 (1974), where the Court said as follows:

> We find nothing in either language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.

Id. at 177.

that the parties entered into freely. *See National Labor Relations Board v. Rockaway News Supply Co., Inc.*, 345 U.S. 71, 77 (1953). To do more would destroy the balance which this Court described in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962), as follows:

> The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace.

Id. at 104.[20]

It is difficult for this *amicus curiae* to see how following the decision of the Second Circuit below will in any way help us to reach the goal of industrial peace through orderly collective bargaining. On the contrary, it would seem to encourage a proliferation of disputes to those personally uninvolved. Moreover, by excusing one party to the contract from having to stand by its bargain, that approach reduces the incentive to

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[20]*See* Relias, *The Developing Law Under Boys Markets*, 23 Labor Law Journal 758 (1972), where the author stated as follows:

> The *Ourisman* case [*Ourisman Chevrolet Co. v. Automotive Lodge No. 1486*, ___F. Supp.___, 65 LC ¶11,751 (D. D.C. 1971) exemplifies at least one unfortunate aspect of *Boys Markets*, which was discussed earlier: So many questions are unanswered as to the standards to be used in determining whether a collective bargaining agreement contains a mandatory arbitration provision that a Court can distinguish *Boys Markets* given only minimal assistance from the particular facts of the case.

Id. at 764.

rely on arbitration to settle disputes and instead forces the parties to confrontation. Lastly, the Second Circuit below said that the sympathy strike was "not seeking to pressure the employer to yield," but it is obvious the serious impact the stoppage by production and maintenance workers would have on the employer's ability to operate its business.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Decision and Order of the United States Court of Appeals for the Second Circuit should be reversed and the proceeding remanded to the District Court with instructions to issue an injunction.

Respectfully submitted,

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